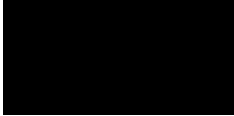


**From:** (b) (6), (b) (7)(C)  
**To:** [McCormick, Kevin](#); [Ohr, Peter S.](#); [Robb, Peter](#)  
**Cc:** [Dale Pierson](#); [Melinda S. Hensel](#)  
**Subject:** Ohr v. Local 150 (18-cv-8414) - Local 150's Responses to Mandatory Initial Discovery (Final E-mail)  
**Date:** Monday, January 14, 2019 6:06:25 PM  
**Attachments:** [mand.disc.req.rpt.01-14-19.FINAL.pdf](#)

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(b) (6), (b) (7)(C)

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

Peter Sung Ohr, Regional Director of the )  
National Labor Relations Board, Region 13, )

Petitioner, )

v. )

International Union of Operating Engineers, )  
Local 150, AFL-CIO, )

Respondent. )

Case No. 18-cv-8414

Judge: Ruben Castillo  
Magistrate Judge: Jeffrey Cole

International Union of Operating Engineers, )  
Local 150, AFL-CIO, )

Counter-Plaintiff, )

v. )

Peter R. Robb, General Counsel of the )  
National Labor Relations Board, and the )  
National Labor Relations Board, )

Counter-Defendants. )

**LOCAL 150's RESPONSES TO  
MANDATORY INITIAL DISCOVERY**

Pursuant to the Judge's standing order on newly filed cases, Respondent/Counter-Plaintiff International Union of Operating Engineers, Local 150, AFL-CIO (the "Union" or "Local 150") submits the following:

1. **Persons Likely to Have Discoverable Information**

**ANSWER:**

- a. Michael Kresge  
6200 Joliet Road  
Countryside, IL 60525

Mr. Kresge is the Local 150 Vice-President. In addition to his responsibilities under the IUOE Constitution and Local 150 By-Laws, he manages the investigation of non-union employers performing work within the occupational and geographic jurisdiction of Local 150; education of non-union employees of their rights under federal and state labor, wage and hour and safety laws; processing of unfair labor practice charges and representation petitions before the NLRB; and publicity of protests against employers in labor disputes. He likely has discoverable information concerning matters alleged in the Petition.

b. Raymond Sundine  
6200 Joliet Road  
Countryside, IL 60525

Raymond Sundine is a Local 150 Task Force Organizer. Mr. Sundine coordinates the identification and investigation of non-union employers performing work within the occupational and geographic jurisdiction of Local 150; educates non-union employees of their rights under federal and state labor, wage and hour and safety laws; participates in the presentation of unfair labor practice charges and representation petitions before the NLRB; and publicizes protests against employers in labor disputes. He likely has discoverable information concerning matters alleged in the Petition.

c. Anthony Deliberto  
6200 Joliet Road  
Countryside, IL 60525

Anthony Deliberto is a Local 150 Business Representative. Mr. Deliberto's primary responsibilities are to negotiate and enforce collective bargaining agreements, primarily in the Construction Material Production Industry. He is also expected to respond to member and employer complaints and requests for assistance generally, and to monitor any labor disputes in

his geographic area of responsibilities. He may have discoverable information relating to the Donegal labor dispute.

- d. Dan Opatkiewicz  
6200 Joliet Road  
Countryside, IL 60525

Dan Opatkiewicz is a Local 150 Business Representative. Mr. Opatkiewicz's primary responsibilities are to negotiate and enforce collective bargaining agreements, primarily in the Construction Material Production Industry. He is also expected to respond to member and employer complaints and requests for assistance generally, and to monitor any labor disputes in his geographic area of responsibilities. He may have discoverable information relating to the Donegal labor dispute.

- e. Freddy Alvarez  
6200 Joliet Road  
Countryside, IL 60525

Freddy Alvarez is a Local 150 Task Force Organizer. Mr. Alvarez coordinates the identification and investigation of non-union employers performing work within the occupational and geographic jurisdiction of Local 150; educates non-union employees of their rights under federal and state labor, wage and hour and safety laws; participates in the presentation of unfair labor practice charges and representation petitions before the NLRB; and publicizes protests against employers in labor disputes. He likely has discoverable information concerning matters alleged in the Petition.

- f. George Antos  
6200 Joliet Road  
Countryside, IL 60525

George Antos is a Local 150 Business Representative. Mr. Antos's primary responsibilities are to negotiate and enforce collective bargaining agreements, primarily in the

Heavy, Highway and Underground Construction Industry. He is also expected to respond to member and employer complaints and requests for assistance generally, and to monitor any labor disputes in his geographic area of responsibilities. He may have discoverable information relating to the Donegal labor dispute.

g. Mike Drew  
6200 Joliet Road  
Countryside, IL 60525

Mike Drew is a Local 150 Business Representative. Mr. Drew's primary responsibilities are to negotiate and enforce collective bargaining agreements, primarily in the Heavy, Highway and Underground Industry. He is also expected to respond to member and employer complaints and requests for assistance generally, and to monitor any labor disputes in his geographic area of responsibilities. He may have discoverable information relating to the Donegal labor dispute.

h. Rich Fahy  
6200 Joliet Road  
Countryside, IL 60525

Rich Fahy is a Local 150 Business Representative. Mr. Fahy's primary responsibilities are to negotiate and enforce collective bargaining agreements, primarily in the Public Sector. He is also expected to respond to member and employer complaints and requests for assistance generally, and to monitor any labor disputes in his geographic area of responsibilities. He may have discoverable information relating to the Donegal labor dispute.

i. Carmela Gonzalez  
6200 Joliet Road  
Countryside, IL 60525

Carmella Gonzalez is a Local 150 Business Representative. Her primary responsibilities are to negotiate and enforce collective bargaining agreements, primarily in the Landscape Industry. She is also expected to respond to member and employer complaints and requests for assistance

generally, and to monitor any labor disputes in her geographic area of responsibilities. She may have discoverable information relating to the Donegal labor dispute.

- j. Jeff Horne  
6200 Joliet Road  
Countryside, IL 60525

Jeff Horne is a Local 150 Business Representative. Mr. Horne's primary responsibilities are to negotiate and enforce collective bargaining agreements, primarily in the Heavy, Highway and Underground Industry. He is also expected to respond to member and employer complaints and requests for assistance generally, and to monitor any labor disputes in his geographic area of responsibilities. He may have discoverable information relating to the Donegal labor dispute.

- k. Steve Karpowicz  
6200 Joliet Road  
Countryside, IL 60525

Steve Karpowicz is a Local 150 Business Representative. Mr. Karpowicz's primary responsibilities are to negotiate and enforce collective bargaining agreements, primarily in the Public Sector. He is also expected to respond to member and employer complaints and requests for assistance generally, and to monitor any labor disputes in his geographic area of responsibilities. He may have discoverable information relating to the Donegal labor dispute.

- l. Paul Keska  
6200 Joliet Road  
Countryside, IL 60525

Paul Keska is a Local 150 Business Representative. Mr. Keska's primary responsibilities are to negotiate and enforce collective bargaining agreements, primarily in the Landscape Industry. He is also expected to respond to member and employer complaints and requests for assistance generally, and to monitor any labor disputes in his geographic area of responsibilities. He may have discoverable information relating to the Donegal labor dispute.

m. Brett Krogstad  
6200 Joliet Road  
Countryside, IL 60525

Brett Krogstad is a Local 150 Business Representative. Mr. Krogstad's primary responsibilities are to negotiate and enforce collective bargaining agreements, primarily in the Public Sector. He is also expected to respond to member and employer complaints and requests for assistance generally, and to monitor any labor disputes in his geographic area of responsibilities. He may have discoverable information relating to the Donegal labor dispute.

n. Terry McNeely  
6200 Joliet Road  
Countryside, IL 60525

Terry McNeely is a Local 150 Task Force Organizer. Mr. McNeely assists in the identification and investigation of non-union employers performing work within the occupational and geographical jurisdiction of Local 150; helps educate non-union employees of their rights under federal and state labor, wage and hour and safety laws; helps present unfair labor practice charges and evidence in representation proceedings before the NLRB; and helps publicize protests against employers in labor disputes. He likely has discoverable information concerning matters alleged in the Petition.

o. Martin Moore  
6200 Joliet Road  
Countryside, IL 60525

Martin Moore is a Local 150 Task Force Organizer. Mr. Moore assists in the identification and investigation of non-union employers performing work within the occupational and geographical jurisdiction of Local 150; helps educate non-union employees of their rights under federal and state labor, wage and hour and safety laws; helps present unfair labor practice charges and evidence in representation proceedings before the NLRB; and helps publicize protests against

employers in labor disputes. He likely has discoverable information concerning matters alleged in the Petition.

p. Reynaldo Nolzco  
6200 Joliet Road  
Countryside, IL 60525

Reynaldo Nolzco is a Local 150 Task Force Organizer. Mr. Nolzco assists in the identification and investigation of non-union employers performing work within the occupational and geographical jurisdiction of Local 150; helps educate non-union employees of their rights under federal and state labor, wage and hour and safety laws; helps present unfair labor practice charges and evidence in representation proceedings before the NLRB; and helps publicize protests against employers in labor disputes. He likely has discoverable information concerning matters alleged in the Petition.

q. Marquis Overstreet  
6200 Joliet Road  
Countryside, IL 60525

Marquis Overstreet is a Local 150 Business Representative. Mr. Overstreet's primary responsibilities are to negotiate and enforce collective bargaining agreements, primarily in the Construction Materials Testing Industry. He is also expected to respond to member and employer complaints and requests for assistance generally, and to monitor any labor disputes in his geographic area of responsibilities. He may have discoverable information relating to the Donegal labor dispute.

r. Michael Roach  
6200 Joliet Road  
Countryside, IL 60525

Michael Roach is a Local 150 Task Force Organizer. Mr. Roach assists in the identification and investigation of non-union employers performing work within the occupational and



geographical jurisdiction of Local 150; helps educate non-union employees of their rights under federal and state labor, wage and hour and safety laws; helps present unfair labor practice charges and evidence in representation proceedings before the NLRB; and helps publicize protests against employers in labor disputes. He likely has discoverable information concerning matters alleged in the Petition.

s. Tom Rottman  
6200 Joliet Road  
Countryside, IL 60525

Tom Rottman is a Local 150 Business Representative. Mr. Rottman's primary responsibilities are to negotiate and enforce collective bargaining agreements, primarily in the Heavy, Highway and Underground Industry. He is also expected to respond to member and employer complaints and requests for assistance generally, and to monitor any labor disputes in his geographic area of responsibilities. He may have discoverable information relating to the Donegal labor dispute.

t. Acy Wartsbaugh  
6200 Joliet Road  
Countryside, IL 60525

Acy Wartsbaugh is a Local 150 Task Force Organizer. Mr. Wartsbaugh assists in the identification and investigation of non-union employers performing work within the occupational and geographical jurisdiction of Local 150; helps educate non-union employees of their rights under federal and state labor, wage and hour and safety laws; helps present unfair labor practice charges and evidence in representation proceedings before the NLRB; and helps publicize protests against employers in labor disputes. He likely has discoverable information concerning matters alleged in the Petition.

- u. Dennis Martin  
1050 N I-55 & E Frontage Road  
Joliet, IL 60431

Dennis Martin is a Local 150 Business Representative. Mr. Martin's primary responsibilities are to negotiate and enforce collective bargaining agreements, primarily in the Heavy, Highway and Underground Industry. He is also expected to respond to member and employer complaints and requests for assistance generally, and to monitor any labor disputes in his geographic area of responsibilities. He may have discoverable information relating to the Donegal labor dispute.

- v. Lance McGill  
6200 Joliet Road  
Countryside, IL 60525

Lance McGill is a Local 150 Business Representative. Mr. McGill's primary responsibilities are to negotiate and enforce collective bargaining agreements, primarily in the Heavy, Highway and Underground Industry. He is also expected to respond to member and employer complaints and requests for assistance generally, and to monitor any labor disputes in his geographic area of responsibilities. He may have discoverable information relating to the Donegal labor dispute.

- w. Jim Potter  
6200 Joliet Road  
Countryside, IL 60525

Jim Potter is a Local 150 member. Mr. Potter volunteers in monitoring jobsites and publicizing protests against employers in labor disputes. He may have discoverable information concerning matters alleged in the Petition.

- x. Perry Helton  
6200 Joliet Road  
Countryside, IL 60525

Perry Helton is a retired Local 150 member. Mr. Helton volunteers in monitoring jobsites and publicizing protests against employers in labor disputes. He may have discoverable information concerning matters alleged in the Petition.

y. Jim Balcom  
6200 Joliet Road  
Countryside, IL 60525

Jim Balcom is a retired Local 150 member. Mr. Balcom volunteers in monitoring jobsites and publicizing protests against employers in labor disputes. He may have discoverable information concerning matters alleged in the Petition.

z. Terry Misch  
6200 Joliet Road  
Countryside, IL 60525

Terry Misch is a retired Local 150 member. Mr. Misch volunteers in monitoring jobsites and publicizing protests against employers in labor disputes. He may have discoverable information concerning matters alleged in the Petition.

aa. Chuck Day  
6200 Joliet Road  
Countryside, IL 60525

Chuck Day is a retired Local 150 member. Mr. Day volunteers in monitoring jobsites and publicizing protests against employers in labor disputes. He may have discoverable information concerning matters alleged in the Petition.

bb. Steve Brink  
6200 Joliet Road  
Countryside, IL 60525

Steve Brink is a retired Local 150 member. Mr. Brink volunteers in monitoring jobsites and publicizing protests against employers in labor disputes. He may have discoverable information concerning matters alleged in the Petition.

cc. Stanley Lumpkin  
6200 Joliet Road  
Countryside, IL 60525

Stanley Lumpkin is a retired Local 150 member. Mr. Lumpkin volunteers in monitoring jobsites and publicizing protests against employers in labor disputes. He may have discoverable information concerning matters alleged in the Petition.

dd. Bob Cunningham  
6200 Joliet Road  
Countryside, IL 60525

Bob Cunningham is a retired Local 150 member. Mr. Cunningham volunteers in monitoring jobsites and publicizing protests against employers in labor disputes. He may have discoverable information concerning matters alleged in the Petition.

ee. Dave Amraen  
6200 Joliet Road  
Countryside, IL 60525

Dave Amraen is a retired Local 150 member. Mr. Amraen volunteers in monitoring jobsites and publicizing protests against employers in labor disputes. He may have discoverable information concerning matters alleged in the Petition.

ff. Frank Studer  
1050 N I-55 & E Frontage Road  
Joliet, IL 60431

Frank Studer is a Local 150 Business Representative. Mr. Studer's primary responsibilities are to negotiate and enforce collective bargaining agreements, primarily in the Heavy, Highway and Underground Industry. He is also expected to respond to member and employer complaints and requests for assistance generally, and to monitor any labor disputes in his geographic area of responsibilities. He may have discoverable information relating to the Donegal labor dispute.

gg. Jayme Sundine  
6200 Joliet Road  
Countryside, IL 60525

Ms. Sundine has volunteered to monitor rats and banners. She may have discoverable information related to the Donegal labor dispute.

hh. Kazual Gray  
6200 Joliet Road  
Countryside, IL 60525

Mr. Gray has volunteered to monitor rats and banners. He may have discoverable information related to the Donegal labor dispute.

ii. Wallace Pendleton  
6200 Joliet Road  
Countryside, IL 60525

Wallace Pendleton is a Local 150 Business Representative. Mr. Pendleton's primary responsibilities are to negotiate and enforce collective bargaining agreements, primarily in the Heavy, Highway and Underground Industry. He is also expected to respond to member and employer complaints and requests for assistance generally, and to monitor any labor disputes in his geographic area of responsibilities. He may have discoverable information relating to the Donegal labor dispute.

Local 150 Officers, employees, and/or volunteer members can only be contacted through counsel who have appeared in this proceeding.

jj. Simon Bradley  
16 W 277 83rd Street, Suite C  
Burr Ridge, IL 60527

2. **Persons Who Have Given Written or Recorded Statements**

**ANSWER:** Local 150 presented various witnesses for statements in unfair labor practice charges filed against Donegal. Local 150 has no statements written or recorded other than

those produced by the NLRB on January 14, 2019, and assumes there is no need to produce them back to the Board.

3. **Documents that May Be Relevant**

**ANSWER:** Following documents Bates-stamped D1OL00001 through D1O00662.

- a. Answer to Consolidated Complaint, *Donegal Services, LLC and International Union of Operating Engineers, Local 150, AFL-CIO*, Case Nos. 13-CA-226831, 13-CA-231913
- b. Settlement Agreement, *Donegal Services, LLC and International Union of Operating Engineers, Local 150, AFL-CIO*, Case Nos. 13-CA-226831, 13-CA-231913
- c. Memorandum of Agreement between Local 150 and WillCo Green, LLC (Excavators, Inc. (Heavy & Highway & Underground) Agreement)
- d. WillCo Green, LLC Sales Contract (SJZJ)
- e. WillCo Green, LLC Termination Letter
- f. WillCo Green, LCC Option to Purchase Agreement and Amendment and Restatement of Operating Agreement
- g. WillCo Green, LLC Articles of Incorporation
- h. WillCo Green, LLC Contribution Reports
- i. WillCo Green, LLC Contractor Reports
- j. Excavators, Inc. Heavy and Highway and Underground Agreement
- k. Grievances filed by Local 150 against WillCo Green
- l. ECS Memorandum of Agreement
- m. Boughton Memorandum of Agreement
- n. Settler's Hill / Curran Memorandum of Agreement
- o. Handbills
- p. Photographs
- q. Picket Logs

- r. “Salt” Agreement
- s. Sundine Notes (partially redacted)
- t. Wartsbaugh Notes
- u. Salt Agreement
- v. Deliberto Phone Records (partially redacted)
- w. Deliberto Notes
- x. Gonzalez Notes

4. **Facts and Legal Theories**

**ANSWER (FACTS):**

1. Local 150 represents heavy equipment operators and other employees in the construction, material production, heavy equipment maintenance and repair, and waste disposal industries throughout northern Illinois and northwest Indiana.

2. Michael Kresge is the Local 150 Vice-President. Raymond Sundine is a Local 150 Task Force Organizer. Over the last several months, these employees of Local 150, as well as other Task Force Organizers, Business Agents, members, and other volunteers, were involved in the identification and investigation of a non-union employer known as Donegal Services, LLC, performing work within the occupational and geographic jurisdiction of Local 150. These individuals have prosecuted unfair labor practice charges brought against Donegal, and otherwise publicized Local 150’s labor dispute with Donegal.

3. Donegal Services, LLC (“Donegal”), is primarily an excavation and sewer and water contractor owned by Simon Bradley. The office and equipment yard is located in Lemont, Illinois. Donegal employs equipment operators, haul truck and lowboy truck drivers performing

excavating and hauling work at various residential and commercial construction sites in the southwest suburbs. Donegal also employs heavy equipment mechanics.

4. A number of Donegal's employees appear to be misclassified as independent contractors despite the fact that they operate Donegal equipment at Donegal jobsites according to Donegal manager instructions.

5. Donegal maintains a second equipment yard at an entity called Willco Green in Plainfield, Illinois. Donegal keeps transfer trucks at Willco Green where some of its employees are assigned to haul garbage dumped at Willco Green to various landfills. WillCo Green is a joint employer and/or alter ego of Donegal.

6. In 2016, Simon Bradley signed an "Option to Purchase Agreement" with Willco Green. In the Option to Purchase Agreement, one of the "Optionees" is listed as "SJZJ, LLC" (Agreement at p. 1). Simon Bradley is identified throughout the document as the representative of SJZJ, LLC (*see, e.g.*, p. 16) and as its "Manager" (*id.* at unnumbered signature page after p. 19). Bradley then is ultimately identified as the "Manager" of the "Company," in the "Amended And Restated Operating Agreement" WillCo Green LLC (*id.* at 1, 6 and unnumbered signature page titled "Joinder").

7. WillCo operates a waste disposal facility at 12152 South Naperville Road ("Option To Purchase Agreement" at 2) in Plainfield (Will County), Illinois. There, WillCo accepts and processes construction debris and other materials transferred from demolition and other construction worksites (*id.*). Edward F. Heil holds himself out as the President of "WillCo Green fka E.F. Heil, LLC."

8. On March 1, 2003, Edward F. Heil signed a Memorandum of Agreement (MOA) with Local 150 on behalf of "E.F. Heil, LLC 12152 S. Naperville Plainfield Road, Plainfield, IL



60544.” That MOA adopted the collective bargaining agreement between Local 150 and the multi-employer bargaining association Excavators, Inc., commonly known as the Illinois Heavy and Highway and Underground Agreement covering the greater Chicagoland area including Will County, Illinois. The “Scope of Work” of that agreement expressly covers “demolition” work, as well as the operation of specific equipment classified therein (p. 4-5).

9. By letter dated December 14, 2015, WillCo notified Local 150 and the Midwest Operating Engineers Fringe Benefit Funds that “E.F. Heil, LLC has changed their name to WillCo Green, LLC.” The letter added, “Although we have changed the name of the company all the corporate information remained the same including but not limited to the FEIN number. Our Address and Contact Information has also remained the same. Thereafter, WillCo continued to remit contributions to the MOE Funds and administrative dues to Local 150 under the contractor Member ID 38355, calling itself, “WillCo Green LLC f/k/a E. F. Heil LLC (38355).”

10. In early 2018, Local 150 began visiting various Donegal jobsites to investigate the Employer’s work and labor practices. In May 2018 Local 150 asked a couple of individuals to make application to Donegal because it had placed a sign seeking truck driver applicants on a public street. Meanwhile, Local 150 agents had made contact with various other Donegal employees to assess their interest in the Union. Employee Billy Hanahan obtained four authorization cards on behalf of Local 150, three in May and one in early June 2018.

11. In May 2018, Hanahan told Local 150 that Donegal was looking for the “rat(s)” who were providing information to the Union about jobsites at which Donegal would be. Hanahan related that he had been questioned by owner Simon Bradley, Bradley’s son Johnny Simpson, and manager William Doherty. The Union backed off further organizational activity, understanding that Donegal was looking to make an example of someone and quell interest in organizing. The

Union continued to monitor various job sites for safety, contamination and other workplace issues it had previously identified.

12. On July 9, 2018, Simon Bradley fired Billy Hanahan, telling Hanahan he knew why he was being fired and to have fun with his “Union buddies.” Local 150 filed a ULP over Hanahan’s termination the same day. On July 11, 2018, Local 150 commenced a ULP strike against Donegal and began lawful ambulatory picketing of Donegal’s trucks and jobsites.

13. On or about July 11, 2018, Local 150 began picketing Donegal at its Lemont facility to protest its unfair labor practices.

14. Local 150 is party to a multi-employer collective bargaining agreement with an employer bargaining association known as the Chicago Area Aggregate Producers Association (CAAPA). The Union and CAAPA have had a longstanding agreement that the Union would provide CAAPA members with as much advance notice of labor disputes as it could to mutually avoid work disruptions while protecting lawful rights of employees. On July 10, 2018, Local 150 distributed notices of its labor dispute with Donegal to various CAAPA signatory employers.

15. On or about July 11, 2018, Local 150 Business Representatives followed Donegal trucks to the Boughton Materials quarry located at 22950 West 119th Street, Plainfield, Illinois. Local 150 represents Boughton employees at that facility under a contract known as the CAAP Material Producers Agreement. That Agreement authorizes employees to honor “lawful primary picket lines, including the picket line of the Union part to this Agreement...at the Employer’s place or places of business.” While Donegal remained at the facility, the Union established a picket protesting Donegal’s unfair labor practices. The Union’s picketing of Donegal ceased when Donegal employees left. Local 150 picketing outside the Boughton facility resumed when Donegal trucks returned on July 16, 17, and 20, 2018.

16. On or about August 3, 2018, and August 7, 2018, Local 150 posted banners at the Elmhurst Chicago Stone facilities located at 351 Royce Road, Bolingbrook, Illinois, and 400 West 1st Street, Elmhurst, Illinois, respectively, stating, “Shame on Elmhurst Chicago Stone for Using Rat Contractors.”. The banners were accompanied by an inflatable rat and no more than two to three monitors. They remained at the Bolingbrook location through August 31, 2018.

17. Beginning on or about August 24, 2018, and continuing throughout mid-September, Local 150 established banners at various Andy’s Frozen Custard locations protesting its use of Donegal. The banners customarily read, “Shame on Andy’s Frozen Custard for Using Rat Contractors.” The Union frequently inflated a rat balloon at these locations, which were monitored by one or two monitors at any given location. It occasionally gave handbills to members of the general public passing by. No Andy’s employees ever refused to work.

18. On or about September 21 through 23, and again on October 12, 2018, Local 150 posted a banner on public property outside the headquarters of Greenspace Homes at 4355 Weaver Parkway, Warrenville, Illinois, stating, “Shame on Greenspace for Harboring Rat Contractors.” The banner was accompanied by an inflated rat and no more than two monitors at any given time. At no time did the Union picket, patrol, or otherwise confront employees or members of the public.

19. On or about November 12 through 14, 2018, Local 150 posted at banner at the office of Overstreet Builders at 3952 Caliente Circle, Naperville, Illinois, stating, “Shame on Overstreet Builders for Harboring Rat Contractors.” The banner was accompanied by an inflated rat and no more than two monitors. At no time did the Union picket, patrol, or otherwise confront employees or members of the public.

20. On or about November 15, and intermittently through November 28, 2018, Local 150 positioned a banner on public property outside the headquarters of Provencal Construction at

50 Burr Ridge Parkway in Burr Ridge, Illinois, stating, “Shame on Provencal Construction for Harboring Rat Contractors.” The banner was accompanied by an inflated rat and no more than two monitors. At no time did the Union picket, patrol, or otherwise confront employees or members of the public.

21. On or about December 18, 19, 20, and 21, 2018, Local 150 positioned a banner outside the headquarters of Ross Builders at 23 North Lincoln Street, Hinsdale, Illinois, stating, “Shame on Ross Builders for Harboring Rat Contractors.” The banner was accompanied by an inflated rat and no more than two monitors. At no time did the Union picket, patrol, or otherwise confront employees or members of the public.

22. Based upon this factual dispute, the Officers of Local 150 and the Trustees of the Fringe Benefit Funds have ordered an audit of WillCo’s books and records. And on September 26, 2018, Local 150 filed grievances against WillCo for various violations of the CBA.

23. On September 5, 2018, Local 150 filed another unfair labor practice charge against Donegal, alleging that on August 7, 2018, Donegal Manager Jim Barry interrogated employees at the WillCo Green facility about their Union activities; and later on August 17, 2018, reduced the work hours of employee Steve O’Gorman in retaliation for his Union activities. The Region issued its Consolidated Complaint on these charges (13-CA-226831 and 13-CA-231913) on December 14, 2018; the Employer answered on December 20, 2018.

24. On September 18, 2018, Donegal filed unfair labor practice charges 13-CP-227526 and 13-CC-227527 against Local 150.

25. After responding to the charges on September 21, 2018, the Regional Director informed Local 150 that absent settlement, including assurances that Local 150 would cease picketing, the Region would issue a complaint concerning Local 150’s picketing at Boughton

Materials, Elmhurst Chicago Stone, Settler's Hill, and Overstreet. The Region dismissed the charges as they related to the Union's use of banners and the inflatable rat.

26. Local 150 agreed to the Regional Director's proposal and ceased all picketing on September 25, 2018. The Region tendered and Local 150 signed a settlement agreement settling Charges 13-CP-227526 and 13-CC-227527 on October 5, 2018, in which Local 150 did not admit violating any section of the NLRA.

27. By letter dated December 10, 2018, the NLRB directed the Region to reconsider its dismissal of charges related to the use of rats and banners at Boughton Materials, Elmhurst Chicago Stone, WillCo Green, and Andy's Custard.

28. By letter dated November 1, 2018, "Edward F. Heil, President" of "E.F. Heil, LLC" purported to terminate the MOA he signed March 1, 2003. On a makeshift letterhead which reads:

WillCo Green, LLC (fka E.F. Heil, LLC)  
12152 S. Naperville/Plainfield Road  
Plainfield, IL 60585

Heil's letter asserts that, "The 'One Man Unit Rule' of the NLRA applies and our contract is heretofore terminated immediately upon receipt of this letter."

29. Local 150 disputes this assertion as legally flawed and factually false. From the inception of the contract covering the Plainfield facility in 2003 until now, the Employer has paid fringe benefit contributions to the Midwest Operating Engineers Fringe Benefit Funds and administrative dues to Local 150 on a unit fluctuating between one and four employees. As recently as July 2016, the Employer remitted contributions on two employees, Michael Davis and Michael G. Davis; and has continued to remit contributions through December 2018 on Thomas Dieboldt.

30. Equally important, throughout the bannering of WillCo's Plainfield facility beginning September 4, 2018, the banner monitors have observed employers operating at least two pieces of heavy equipment within the scope of work of the CBA. Moreover, Local 150 organizers in contact with employees working at the WillCo Plainfield facility have identified as many as five employees performing bargaining unit work. They include Tom Dieboldt, who was referred to WillCo upon request to the Local 150 hiring hall to operate a dozer; two covert salts who ran equipment and performed mechanics work; and two employees of Donegal, one who ran a dozer, the other operated the crusher and an excavator.

31. Ross Builders uses Donegal in its home construction business. Beginning on or about December 17, 2018, Local 150 established a banner outside the offices of Ross Builders in Hinsdale, Illinois. The Banner stated:

SHAME ON ROSS BUILDERS  
For Using Rat Contractors

The banner is backed by one of Local 150's "Scabby the Rat" and a "rat patrol" vehicle which has been positioned on public property outside of the entrance. The banner, rat, and vehicle are overseen by one to two monitors who remain in the vehicle while the banner and rat are displayed. Neither monitor has ever had a picket sign, patrolled the entrance, or used a bullhorn to address the public. Nor have they ever parked their cars on the driveway surface, or otherwise blocked entrance or egress to Ross's facility.

32. On or about December 20, 2018, Ross Builders filed an unfair labor practice charge against Local 150. Despite its false allegation that Local 150 had picketed Ross Builders, the NLRB consolidated that charge with the existing complaint.

**ANSWER (LEGAL THEORIES):**

Local 150's legal theories are developed to date in its "Brief in Opposition to Petition for Injunctive Relief" (Case No. 18-cv-8414, Doc. #4, filed 12/21/18).

5. **Computation of Each Category of Damages**

**ANSWER:** Local 150's damages incurred from the NLRB's violation of its First Amendment rights are imputed. The Union's attorneys' fees under 42 U.S.C. § 1983 are ongoing.

6. **Insurance or Other Agreement**

**ANSWER:** None.

Dated: January 14, 2019

Respectfully submitted,

By: /s/ Dale D. Pierson  
One of the Attorneys for Local 150

Attorneys for Local 150:  
Dale D. Pierson (*dpierson@local150.org*)  
Melinda S. Hensel (*mhensel@local150.org*)  
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## **CERTIFICATE OF SERVICE**

The undersigned, an attorney of record, hereby certifies that on January 14, 2019, he served the foregoing ***Response to Mandatory Initial Discovery*** and accompanying documents on the following via electronic mail:

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National Labor Relations Board  
c/o Peter Robb, General Counsel  
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By: /s/ Dale D. Pierson  
One of the Attorneys for Local 150

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**From:** [SM-Publicinfo](#)  
**To:** [Kyle, John](#); [Stock, Alice B.](#); [Robb, Peter](#)  
**Subject:** FW: re: "Scabby" the rat case  
**Date:** Thursday, January 17, 2019 2:48:52 PM

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Just FYI. (b) (5)

(b) (5)

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**From:** Kanu, Hassan <[hkanu@bloomberglaw.com](mailto:hkanu@bloomberglaw.com)>  
**Sent:** Wednesday, January 16, 2019 4:43 PM  
**To:** SM-Publicinfo <[Publicinfo@nrlb.gov](mailto:Publicinfo@nrlb.gov)>  
**Cc:** Roberts, Tracey <[Tracey.Roberts@nrlb.gov](mailto:Tracey.Roberts@nrlb.gov)>  
**Subject:** FW: re: 'Scabby' the rat case

Hi all,

Forwarding along this inquiry. Please do let me know if the agency, the general counsel, or the chairman has comments, or that they won't have any, in that event. Thanks in advance.

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**From:** Kanu, Hassan  
**Sent:** Wednesday, January 16, 2019 11:07 AM  
**To:** Witkin, Cynthia <[Cynthia.Witkin@nrlb.gov](mailto:Cynthia.Witkin@nrlb.gov)>  
**Subject:** re: 'Scabby' the rat case

Hey Cynthia,

Just a heads up for now that I'll follow up w questions a bit later: I'm working on a story about the NLRB's case against IUOE Local 150, which is at the board and is also an injunction case at the Northern Illinois District Court (No. 18-cv-8414). The case is a challenge against a union's use of the inflatable rat balloon.

My article will make the points that (1) the general counsel is seeking to change current interpretation of the law as it applies to general use of the rat balloons (placing them near a business) and picketing along with the rat balloons; (2) that GC Robb has been looking for an appropriate case to do so (3) that GC Robb seems to find the balloons particularly offensive/confrontational/coercive, on a personal level.

I'll let you know anything else that comes up as I write. It'd be great if you guys have general comments on any of the above, for now, and I'll follow up with specific questions a bit later, as I said.

Thanks! Talk soon.

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**Hassan Kanu**

Legal Editor/Reporter

**Bloomberg Law**

Desk 703.341.3953

Cell 240.643.7506

Twitter: [@hassankanu](https://twitter.com/hassankanu)

**From:** [Nixon-Jackson\\_Thetis](#)  
**Subject:** Legal News FYI 01-22-19  
**Date:** Tuesday, January 22, 2019 10:19:37 AM

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Tuesday, January 22, 2019

## United States: Federal Government Shutdown Effect On Employers

*Mondaq Business Briefing* 22 Jan 2019 07:38

The U.S. Antideficiency Act calls for a partial government shutdown when Congress fails to appropriate annual funds to agencies. As Congress and President Trump cannot agree on appropriations spending, the U.S. government is in the midst of the longest...

## Labor Counsel Fights Protest Icon • Zoo Attack Raises Safety Issue

*BloombergLaw - Daily Labor Report* 22 Jan 2019 07:06

By Patricio Chile The Bell Tolls for Scabby The National Labor Relations Board's general counsel Peter Robb is looking to exterminate Scabby the Rat, a well-recognized labor protest icon. A union member stands near Scabby, a giant inflatable rat that is...

## Punching In: Labor Board Shift, Overtime-Shutdown Intrigue

*BloombergLaw - Daily Labor Report* 22 Jan 2019 06:07

By Chris Opfer and Jaclyn Diaz Monday morning musings for workplace watchers You Call that a Tip? | Shutdown Goes into Overtime | The Atlantic City Experiment Chris Opfer: If there's one ruling out of the current National Labor Relations Board that...

## Death to Scabby: Trump Labor Counsel Aims to Deflate Protest Icon

*BloombergLaw - Daily Labor Report* 22 Jan 2019 06:07

Labor Law • Rat balloons protected by labor laws, First Amendment • Robb looked for cases to reverse current law since mid-2018 • Move fits Trump administration's deregulatory approach to business By Hassan A. Kanu Scabby the Rat stands 12 to 30 feet...

## United States: NLRB Issues Important Decision Narrowing What Constitutes "Protected Concerted Activity"

*Mondaq Business Briefing* 22 Jan 2019 05:04

Majority Rules That Skycap's Complaint About Bad Tipping Was Not Protected Concerted Activity The National Labor Relations Board ("NLRB" or "Board") kicked off 2019 with an important decision that significantly narrowed the standard for when an...

## Global union suspends Volkswagen agreement over Chattanooga plant dispute

*Chattanooga Times/Free Press (Chattanooga, TN)* 21 Jan 2019 17:00

Jan. 21 --This story was updated Jan. 21, 2019, at 4:34 p.m. with more information. A global union said Monday it has suspended its agreement with Volkswagen, citing the automaker's dispute with the United Auto Workers in Chattanooga. "As the German...

## Hate Speech as Protected Conduct: Reworking the Approach to Offensive Speech under the NLRA

*Iowa Law Review* 21 Jan 2019 15:53

I. Introduction Recent political and ideological division within the United States has renewed the debate about an employee's freedom to express political beliefs. Particularly in wake of the resurgence of the white nationalism movement—most notably the...

## NLRB Overrules Obama-Era Rule Governing Union Protected Activity

*JD Supra: Labor & Employment Law* 21 Jan 2019 11:16

Once again, the Trump-era National Labor Relations Board ("NLRB") has overruled a previous Obama-era Labor Board decision, establishing an objective test for determining whether statements made by an employee constitutes protected activity under the...

## IndustriALL suspends global agreement with Volkswagen

*IndustriALL Global Union* 21 Jan 2019 10:38

As the German car manufacturer consistently refuses to accord the same rights to its workers in Chattanooga, Tennessee, US, as it does in the rest of the world, IndustriALL Global Union is today suspending its long-standing global agreement with...

## What's the lowdown on the shutdown?

*National Law Review* 20 Jan 2019 23:39

Article By The partial government shutdown continues. The shutdown has captured the attention of Washington politicians and the media, not to mention the hundreds of thousands of federal employees who are currently furloughed or working without pay. For...

## Unionization attempt by non-tenure track faculty comes to a close

*Insidevandy* 20 Jan 2019 22:43

The Service Employees International Union (SEIU) withdrew its petition to unionize Non-Tenure Track (NTT) faculty members in the College of Arts and Science, marking the end of an ongoing movement to unionize NTT faculty at Vanderbilt. SEIU Local 25 is...

## Divided D.C. Circuit Panel Largely Upholds The NLRB's Browning-Ferris Decision And Challenges The Board's Authority To Conduct Rulemaking

*Mondaq Business Briefing* 20 Jan 2019 22:11

On December 28, 2018, a divided D.C. Circuit panel affirmed, in part, the National Labor Relations Board's (NLRB's or Board's) Browning-Ferris joint-employer analysis. See *Browning-Ferris Indus. of Cal., Inc. v. NLRB*, No. 16-1028 (D.C. Cir. Dec. 28, 2018)...

## GOP Leaders Back New Franchise Rule

*Washington Free Beacon (Washington, DC)* 19 Jan 2019 05:06

Republican Congressional leaders are throwing their weight behind a new federal labor regulation reversing a controversial Obama-era ruling.

Sen. Lamar Alexander (R., Tenn ), chairman of the Senate Committee on Health, Education, Labor, & Pensions, along...

### **Labor Board Makes It Harder For Employees To Claim Their Complaints Are Protected**

*JD Supra: Labor & Employment Law* 18 Jan 2019 19:45

In a 3-1 ruling hat should be hailed by employers across the country, the National Labor Relations Board just made it harder for employees to successfully claim that their workplace gripes constitute protected concerted activity. The January 11... By:...

### **New Bench Book Issued By The NLRB**

*National Law Review* 18 Jan 2019 14:55

Article By The National Labor Relations Board (NLRB), like many federal agencies, has its own division of "administrative law judges" that preside over cases brought to the agency. In fact, the NLRB takes most of its actions through individual case...

### **We're Open! NLRB Still Operating During Government Shutdown**

*National Law Review* 18 Jan 2019 13:41

Article By During a government shutdown a few years back, the National Labor Relations Board (NLRB) was closed for business . That resulted in the delay of processing new and pending cases at the agency. It's a different story this time around, however,...

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